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June 26, 2003

Ms. Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

Re: *Petition of Tennessee American Water Company to Change and Increase Certain Rates and Charges So As to Permit It to Earn a Fair and Adequate Rate of Return on Its Property Used and Useful In Furnishing Water Service to Its Customers, Docket No. 03-00118.*

Dear Chairman Kyle:

Enclosed for filing are the original and thirteen (13) copies of the Tennessee American Water Company's Response to Attorney General's Motion to Strike and Exclude the Testimony of Chris Klein for filing in the above-styled matter.

Should you have any questions with respect to this filing, please do not hesitate to contact me at the telephone number listed above.

Best regards.

Very truly yours,



R. Dale Grimes

RDG/ts
Enclosures

cc: Certificate of Service List (with enclosures)
Mr. William F. L'Ecuyer (via facsimile)
Mr. Michael Miller (via facsimile)
Mr. Roy Ferrell (via facsimile)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing letter has been served, via the method(s) indicated, on this the 26th day of June, 2003, upon the following:

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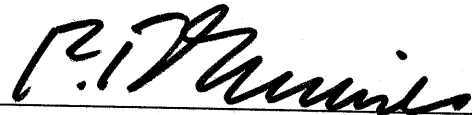
Vance L. Broemel, Esq.
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David C. Higney, Esq.
Grant, Konvalinka & Harrison, P.C.
633 Chestnut Street, 9th Floor
Chattanooga, TN 37450



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BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE APR 11: 54

IN RE:

T.R.A. DOCKET ROOM

PETITION OF TENNESSEE AMERICAN)
WATER COMPANY TO CHANGE AND)
INCREASE CERTAIN RATES AND)
CHARGES SO AS TO PERMIT IT TO)
EARN A FAIR AND ADEQUATE RATE)
OF RETURN ON ITS PROPERTY USED)
AND USEFUL IN FURNISHING WATER)
SERVICE TO ITS CUSTOMERS)

Docket No. 03-00118

**TENNESSEE AMERICAN WATER COMPANY'S
RESPONSE TO ATTORNEY GENERAL'S MOTION TO STRIKE AND
EXCLUDE THE TESTIMONY OF CHRIS KLEIN**

Tennessee American Water Company ("TAWC") respectfully submits that the Attorney General's Motion to Strike and Exclude the Testimony of Chris Klein is not well taken and should be denied. The Attorney General is incorrect in asserting (1) that TAWC did not previously disclose Dr. Klein's name as a possible rebuttal witness and (2) that TAWC has violated its duty to supplement its discovery responses in a timely manner. In fact, the Attorney General has long been on notice that TAWC was considering using Dr. Klein as a rebuttal witness. Moreover, TAWC did not actually decide to use Dr. Klein as a rebuttal witness until less than one week ago, and accordingly it has not violated its duty to supplement discovery responses concerning that expert testimony.

The procedural schedule established for this case provided that the interveners, including the Attorney General, would file their direct testimony on Friday, May 30, 2003. TWAC's rebuttal testimony was due Monday, June 23, 2003. On April 30, 2003,

the Attorney General propounded its second set of discovery requests on TAWC, including a request concerning information about TAWC's expected expert witnesses. On May 9, 2002, TAWC responded in full as to all expert witnesses it then expected to call at the hearing. TAWC's response also included the following:

However, the Company may wish to introduce additional witnesses to rebut specific issues raised by interveners in their direct testimony

The name of Dr. Chris Klein was not included because at that time TAWC had not determined that it would call Dr. Klein, nor had TAWC seen the interveners' direct testimony to know what specific issues were to be rebutted. Nonetheless even before the interveners filed their direct testimony, TAWC did advise a member of the Attorney General's staff that it was considering using Dr. Klein as a rebuttal witness depending on the interveners' direct testimony. Dr. Klein and his professional activities, of course, are well known to the members of the Attorney General's office who have handled regulatory matters before the TRA.

The procedural schedule established no deadline for the disclosure of rebuttal witnesses other than the June 23, 2003 deadline for filing rebuttal testimony. Consistent with the statement in its discovery response, after receiving the interveners' testimony TAWC evaluated the need for Dr. Klein to provide rebuttal testimony and on what issues. Two weeks after the interveners' testimony was filed, TAWC asked Dr. Klein to draft potential rebuttal testimony. TAWC made the decision to use testimony from Dr. Klein on June 19 or 20. His testimony was not finalized until Monday, June 23, 2003, the due date for rebuttal testimony.

The Attorney General faults TAWC for not supplementing its discovery responses with information concerning Dr. Klein prior to filing his rebuttal testimony. This position is untenable. If the Attorney General is arguing that TAWC was obligated to supplement its discovery responses before it had decided whether to use testimony from Dr. Klein and what topics would be included, this would require the Attorney General to rewrite the discovery request it propounded: TAWC did not "expect to call" Dr. Klein as an expert witness until just before the rebuttal testimony deadline. On the other hand, if the Attorney General is arguing the TAWC should have filed a supplemental discovery response in the day or two that TAWC was finalizing all rebuttal testimony prior to the June 23 deadline, then it seeks to hold TAWC to an unrealistic and unnecessary standard. Most of the information requested was included in Dr. Klein's testimony itself, and TAWC has now supplemented its discovery responses within three days of filing the rebuttal testimony. Under the circumstances, this complies with the requirement to provide timely supplementation.

The Attorney General finally argues that full investigation of Dr. Klein's testimony is not now possible, including a review of his prior testimony or papers on similar topics. However, the Attorney General's staff knows much better than TAWC the nature and details of Dr. Klein's prior testimony and papers, having worked with him for many years when he was on the TRA's staff. Most, if not all, of that testimony is a matter of public record at the TRA itself. Regardless, TAWC has now answered the discovery requests with respect to Dr. Klein in full compliance with the procedural orders in this case. It would be a gross injustice to penalize TAWC, and to deprive the TRA of Dr. Klein's testimony, when TAWC has fully complied in a timely manner with all the

voluminous discovery requests that have been made by the interveners as well as the data requests from the TRA staff.

For the foregoing reasons, the Attorney General's motion to strike and exclude the testimony of Chris Klein should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Dale Grimes", written over a horizontal line.

T. G. Pappas (#2703)
George H. Masterson (#6241)
R. Dale Grimes (#6223)
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*Counsel for Petitioner
Tennessee American Water
Company*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Tennessee American Water Company's Response to Attorney General's Motion to Strike and Exclude Testimony of Chris Klein has been served, via the method(s) indicated, on this the 26th day of June, 2003, upon the following:

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